HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND
HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION NO : 2007 of 2006

Between:

K.Anuradha and 3 others

... Petitioners

AND

The Canara Bank rep by its Chief Manager,

M.G.Road Branch, Secunderabad.

...Respondents

::JUDGMENT::

Counsel for the Petitioners: Sri N.V.Anantha Krishna
Counsel for the Respondent: Sri Deepak Bhattacharjee

Dated 2..2..2006

Per Sri G.S.Singhvi, CJ

In this petition, the petitioners have prayed that the respondent Canara Bank be restrained from dispossessing them from the premises bearing Municipal No.15-5-826, 15-5-826B,
15-5-826/1, 15-5-826/2 and 15-5-826/3 admeasuring
272 square yards situated at Afzulgunj, Hyderabad. They have further prayed for issuance of a direction to the respondent to give them an opportunity to repay the amount outstanding against late Sri K. Veeresh Murthy.

Late Sri K. Veeresh Murthy, husband of petitioner No.1 and father of petitioners No.2 to 4 took a loan of Rs.25,00,000/- from the respondent Bank and mortgaged the property in question by a registered deed executed in favour of the Bank. On account of non-repayment of the loan, the Bank initiated proceedings against the borrower under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). In the first instance, notice under Section 13 (2) was issued. This was followed by notice under Section 13 (4). Thereafter, on an application made by the Bank under Section 14 of the Act, the concerned Court passed an order for appointment of Advocate Commissioner for

taking possession of the property. Late Sri K. Veeresh Murthy do not appear to have challenged notices issued by the Bank under Sections 13 (2) and 13 (4) of the Act. After his death on 29-10-2005, the petitioners also do not appear to have pursued the matter and contested the application filed by the Bank under Section 14 of the Act. However, when the Advocate Commissioner tried to take possession of the property in furtherance of order passed by the competent court, they made representation dated
16-1-2006 for grant of time to clear the dues outstanding against late Sri K. Veeresh Murthy and then filed this petition under Article 226 of the Constitution of India.

Sri N.V. Anantha Krishna made a strenuous effort to persuade us to issue a direction to the respondents to consider representation dated 16-1-2006 and give 9 months time to them to clear the outstanding dues, but we have not felt persuaded to entertain the writ petition because,

a) the petitioners have not approached the Court with clean hands inasmuch as they have deliberately omitted to place on record copies of notices issued by the respondent Bank under Sections 13(2) and 13(4) of the Act, Order dated 7.4.2005 passed by Debt Recovery Tribunal, Hyderabad dismissing SA No.77 of 2005. Copy of the order passed by the Chief Judicial Magistrate under Section 14 has also not being placed before the Court. It is not the petitioners' case that they do not have knowledge of the notices issued by the respondent Bank under Sections 13(2) and 13(4) of the Act or the order passed by the competent Court under Section 14 of the Act. It is therefore reasonable to presume that they have deliberately omitted to place the relevant documents before the Court. In our view, by withholding the documents, which have direct bearing on the decision of the writ petition, the petitioners have tried to mislead the Court in accepting their innocuous prayer for issuance of a direction to the respondent to entertain their representation and, keeping in view the settled proposition of law that a party seeking relief under Article 226 of the Constitution must approach the Court with clean hands and the one who suppresses the facts or makes an attempt to mislead the Court is not entitled to be heard on the merits of the case, we are not inclined to entertain their prayer.

In this connection, it is apposite to observe that Satya (truth) and Ahinsa (non-violence) are the two basic values of life, which have been cherished for centuries in this land of Mahavir and Mahatma Gandhi. People from different parts of the world come here to learn these fundamental principles of life. However, post-

independence era and particularly the last two decades have witnessed sharp decline in these two basic values of life. Materialism has over-shadowed the old ethos and quest for personal gain is so immense that people do not have any regard for the 'truth'.

Truth was the hallmark of the justice delivery system which operated in the country till the establishment of the court system under British rule. The people used to tell truth and truth only without being influenced by its consequences. In the present day judicial system, the truth is perhaps the biggest casualty. Unscrupulous litigants like the petitioners leave no stone unturned to mislead the quasi-judicial and judicial authorities and the courts for material gains. The entire system has become victim of such persons. In order to meet this challenge, the courts have evolved new rules, strategies and techniques. One such rule is that the court will not grant hearing to a person who does not approach it with clean hands. To put it differently, a person who touches the fountain of justice with the tainted hand or who makes an attempt to pollute the course of justice by making false or misleading statements or by suppressing facts must be shown the door at the threshold.

In **Hari Narain v. Badri Das**, the Supreme Court upheld the objection raised on behalf of the respondents that the appellant was guilty of misstating the facts and revoked the leave by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art.136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.,**

the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

In **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**, the Supreme Court declined relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the Court observed:

> "Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Art.136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

In **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**, the Supreme Court held that where a preliminary decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party deserves to be thrown out at any stage of the litigation.

In **Nand Lal and others v. State of Jammu and Kashmir and another**, a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

> "Where the petitioners under Art. 226 have not stated the relevant facts petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

In **Harbhajan Kaur v. State of Punjab and others**, a Division Bench of Punjab and Haryana High Court held as under:

> "The writ petitioners have tried to overreach the Court. They did not bring the correct facts to the notice of the Court and obtained an order from us by concealing material facts and without impleading vitally affected party to the writ petition. They have been fighting litigation against the Punjab Wakf Board since 1986 as is passed in Petition No.363 of 1986 (Sham Singh and another v. Punjab Wakf Board). They did not disclose that their applications for transfer of land were dismissed by the Tehsildar (Sales) and, on appeal the orders were affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner were pending before the Chief Sales Commissioner, that the Punjab Wakf Board had been contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that in judicial proceedings Smt.Kuldip Kaur and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land."

Reference also deserves to be made to some of the English decisions on this subject. In **Rex v. Kensington**, Cozens Hardy M.R. made the following observations on the conduct of a party in an ex-parte application in the following words:

> "On an ex-parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

Lord Scrutton L.J., said:

> "It has for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any applicant comes to the Court to obtain relief on an ex-parte statement, he should make a full and fair disclosure of all the material facts, facts not law …
>
> … The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

In **R v. Churchwardens of All Saints Wigan**, Lord Haterlay observed:

> "Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it – matters connected with delay or possibly with the conduct of the parties."

In **Rex v. Garland**, it was held:

> "Where a process is ex debito justitiae, the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides."

b) Although the petitioners are seeking to restrain the respondent and the Advocate Commissioner appointed under Section 14 of the Act from taking possession of the property mortgaged by the borrower, they have neither impleaded the Advocate Commissioner as party respondent nor they have challenged order passed by the competent Court and, without going into the legality of that order, it is not possible to entertain the prayer made in the writ petition.

For the reasons stated above, the writ petition is dismissed.

G.S.SINGHVI, CJ

Dt.2.2.2006

G.BHAVANI PRASAD, J

Msv / svs